

Rick L. McKnight (State Bar No. 55183)
fmcknight@jonesday.com
Alexis Adian Smith (State Bar No. 274429)
asmith@jonesday.com
JONES DAY
555 South Flower Street
Fiftieth Floor
Los Angeles, CA 90071.2300
Telephone: +1.213.489.3939
Facsimile: +1.213.243.2539

Greg L. Lippetz (State Bar No. 154228)
glippetz@jonesday.com
JONES DAY
1755 Embarcadero Road
Palo Alto, CA 94303
Telephone: +1.650.739.3939
Facsimile: +1.650.739.3900

Attorneys for Plaintiff and Cross-Defendant,
California Berry Cultivars, LLC and Cross-
Defendants Douglas Shaw and Kirk Larson

Rachel Krevans (State Bar No. 116421)
RKrevans@mofo.com
Wesley E. Overson (State Bar No. 154737)
WOverson@mofo.com
Matthew A. Chivvis (State Bar No. 251325)
MChivvis@mofo.com
MORRISON & FOERSTER LLP
425 Market Street
San Francisco, California 94105-2482
Telephone: 415.268.7000
Facsimile: 415.268.7522

Attorneys for Defendant and Cross-
Complainant, The Regents of the University
of California

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

CALIFORNIA BERRY CULTIVARS, LLC,

Plaintiff,

v.

THE REGENTS OF THE UNIVERSITY OF
CALIFORNIA,

Defendant.

THE REGENTS OF THE UNIVERSITY OF
CALIFORNIA,

Cross-Complainant,

v.

CALIFORNIA BERRY CULTIVARS, LLC,
DOUGLAS SHAW, AND KIRK LARSON,

Cross-Defendants.

Case No. 3:16-CV-02477-VC

~~PROPOSED~~ STIPULATED ORDER
RE: DISCOVERY OF
ELECTRONICALLY STORED
INFORMATION

1 **1. PURPOSE**

2 This Order will govern discovery of electronically stored information (“ESI”) in this case
3 as a supplement to the Federal Rules of Civil Procedure, this Court’s Guidelines for the
4 Discovery of Electronically Stored Information and any other applicable orders and rules.

5 **2. COOPERATION**

6 The parties are aware of the importance the Court places on cooperation and commit to
7 cooperate in good faith throughout the matter consistent with this Court’s Guidelines for the
8 Discovery of ESI.

9 **3. LIAISON**

10 The parties have identified liaisons to each other who are and will be knowledgeable
11 about and responsible for discussing their respective ESI. Each e-discovery liaison will be, or
12 will have access to those who are, knowledgeable about the technical aspects of e-discovery,
13 including the location, nature, accessibility, format, collection, search methodologies and
14 production of ESI in this matter. The parties will rely on the liaisons, as needed, to confer about
15 ESI and to help resolve disputes without court intervention.

16 **4. PRESERVATION AND PRODUCTION**

17 The parties have discussed their preservation obligations and needs, and they agree that
18 preservation of potentially relevant ESI will be reasonable and proportionate. A party’s
19 meaningful compliance with this Order and efforts to promote efficiency and reduce costs will be
20 considered in cost shifting determinations.

21 **5. SEARCH**

22 Absent a showing of good cause, email production requests shall be limited to five (5)
23 custodians per producing party. Plaintiff and counter-claim defendants believe there may be a
24 need for email production from more than five custodians from Defendants, but will make the
25 showing of good cause when and if this need arises. The email production requests shall identify
26 the custodian by name, search terms, and specific date range for the search of the proposed
27 responsive ESI. Each requesting party shall limit its email production requests to a total of five
28 (5) search terms per custodian per producing party. The search terms shall be narrowly tailored to

particular issues. Indiscriminate terms, such as the producing company's name or its product name, are inappropriate unless combined with narrowing search criteria that sufficiently reduce the risk of overproduction. A conjunctive combination of multiple words or phrases (e.g., "computer" and "system") narrows the search and shall count as a single search term. A disjunctive combination of multiple words or phrases (e.g., "computer" or "system") broadens the search, and thus each word or phrase shall count as a separate search term unless they are variants of the same word. Use of narrowing search criteria (e.g., "and," "but not," "w/x") is encouraged to limit the production and shall be considered when determining whether to shift costs for disproportionate discovery.

6. PRODUCTION FORMAT

A. General Production Format

The parties agree to produce documents in single-page, black and white Group IV. tiff images of at least 300 dpi format, with database image load files (.opt, .dii, .lfp, and .lst files) that denote document breaks. Electronic files shall be produced with document-level extracted text, and scanned documents shall be produced with OCR. If particular documents warrant a different format, the parties will cooperate to arrange for the mutually acceptable production of such documents. Excel files and other spreadsheet files will be produced as native files. Native files of ESI may also be produced at the producing party's discretion when reasonably necessary to make the information contained therein accessible or upon reasonable request of the requesting party. To the extent either party believes, on a case-by-case basis, that documents should be produced in an alternative format (e.g., in color), the parties have agreed that they will meet and confer in good faith concerning such alternative production arrangements.

B. Metadata

All productions shall include a .DAT file that contains the following metadata field: BegBates, EndBates, BegAttach, EndAttach, NativeLink, AttachNum, Pagecount, TextPath, Filename, Custodian (or physical location if no custodian), and Docextension.

Email productions shall include a .DAT file that contains the following metadata fields: BegBates, EndBates, BegAttach, EndAttach, NativeLink, AttachNum, Pagecount, TextPath,

1 Filename, To, From, CC, BCC, Email_Subject, Date_Sent, and Docextension.

2 To the extent either party believes, on a case-by-case basis, that certain types of metadata
3 should or should not be produced, the parties have agreed that they will meet and confer in good
4 faith concerning such alternative production arrangements.

5 **7. DOCUMENTS PROTECTED FROM DISCOVERY**

6 a) Pursuant to Fed. R. Evid. 502(d), the production of a privileged or work-product-
7 protected document, whether inadvertent or otherwise, is not a waiver of privilege or protection
8 from discovery in this case or in any other federal or state proceeding. For example, the mere
9 production of a privileged or work-product-protected document in this case as part of a mass
10 production is not itself a waiver in this case or in any other federal or state proceeding.

11 b) Communications with counsel for a party regarding this case that post-date the
12 filing of the complaint need not be placed on a privilege log.

13 **8. MODIFICATION**

14 This Stipulated Order may be modified by a Stipulated Order of the parties or by the
15 Court for good cause shown.

16 IT IS SO STIPULATED, through Counsel of Record.

17
18 Dated: September 13, 2016

JONES DAY

19
20 By: /s/ Greg L. Lippetz
Greg L. Lippetz

21 Attorneys for Plaintiff and Cross-Defendant
22 CALIFORNIA BERRY CULTIVARS, LLC
23 and for Cross-Defendants DOUGLAS SHAW
and KIRK LARSON

24 Dated: September 13, 2016

MORRISON & FOERSTER LLP

25 By: /s/ Matthew A. Chivvis
Matthew A. Chivvis

26 Attorneys for Defendant and Cross-
27 Complainant
28 THE REGENTS OF THE UNIVERSITY OF
CALIFORNIA

Pursuant to Civil Local Rule 5-1(i)(3), I hereby attest that concurrence in the filing of this document has been obtained from all other signatories listed and on whose behalf this filing is submitted.

Dated: September 13, 2016

JONES DAY

By: /s/ Greg L. Lippetz
Greg L. Lippetz

Attorneys for Plaintiff and Cross-Defendant
CALIFORNIA BERRY CULTIVARS, LLC
and for Cross-Defendants DOUGLAS SHAW
and KIRK LARSON

IT IS ORDERED that the forgoing Agreement is approved.

Dated: 9/14/16



HONORABLE VINCE CHHABRIA
U.S. DISTRICT COURT JUDGE